

No. 82474-6

FAIRHURST, J. (concurring) — One could infer from the lead opinion’s holding that a child cannot sue for loss of parental consortium unless the parent’s underlying injury causes permanent disability. The question of whether permanent disability is required to sustain a claim for loss of parental consortium is one of first impression and should be explored fully rather than decided by implication. Because I do not necessarily agree that Washington should recognize claims only for permanent loss of parental consortium, I write separately to encourage the parties to address on remand whether Washington should recognize claims for loss of consortium based on a parent’s temporary injury.

To defeat summary judgment, the Blackshear children must point to a genuine factual dispute as to whether they could feasibly have joined their claim to the underlying negligence suit.<sup>1</sup> *Stevens v. Brink’s Home Sec., Inc.*, 162 Wn.2d 42, 46-

---

<sup>1</sup>In Washington, the plaintiff in a loss-of-parental-consortium case has the burden of setting forth facts showing unfeasibility. *Ueland v. Pengo Hydra-Pull Corp.*, 103 Wn.2d 131, 137, 140, 691 P.2d 190 (1984).

47, 169 P.3d 473 (2007). The parties do not dispute that when the Blackshear children filed a claim for loss of parental consortium in March 2006, they alleged facts that would be sufficient to state their claim if not for the joinder requirement. The Blackshear children must therefore allege that, sometime between the time their parents filed suit and the time the children filed suit, their loss-of-consortium claim became viable due to some change in circumstances.<sup>2</sup> The Blackshear children allege two changed circumstances: first, that they went from thinking Blackshear would make a full recovery to knowing he would not when his final surgery proved ineffective and, second, that their family's financial situation became desperate around the time Blackshear's negligence suit went to trial. Without further explanation, the lead opinion's holding that these facts are material to the feasibility of joinder could be read as implying that the Blackshear children needed to know their father's disability would be permanent before their claim accrued. I wish to emphasize the lead opinion's holding should not be thus construed.

I concur in the result because the questions of fact in this case cannot be conclusively found to be either material or immaterial to the feasibility of joinder until the question of whether Washington recognizes claims for temporary loss of parental consortium is resolved. That question should be addressed on remand.

---

<sup>2</sup>The Blackshear children's claim accrued when they "knew or should have known the essential elements of [their] claim." *Green v. A.P.C.*, 136 Wn.2d 87, 102, 960 P.2d 912 (1998).

*Kelley v. Centennial Contractors, Inc.*, No. 82474-6  
Fairhurst, J. (concurring)

AUTHOR:

Justice Mary E. Fairhurst

---

WE CONCUR:

---

---

---

---

---

---